

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**JACOB SMITH,**

**Plaintiff,**

**v.**

**FIRSTENERGY CORP. AND  
FIRSTENERGY SERVICE CO.,**

**Defendants.**

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**BRIAN HUDOCK AND CAMEO  
COUNTERTOPS, INC.,**

**Plaintiffs,**

**v.**

**FIRSTENERGY CORP., *et al.*,**

**Defendants.**

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**JAMES BULDAS,**

**Plaintiff,**

**v.**

**FIRSTENERGY CORP., *et al.*,**

**Defendants.**

**Case Nos. 2:20-cv-03755, 03954, 03987**

**Judge Edmund A. Sargus**

**Magistrate Judge Kimberly A. Jolson**

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**FIRSTENERGY DEFENDANTS' RESPONSE TO  
PLAINTIFFS' MOTION TO ADD ADDITIONAL PARTY**

Defendants FirstEnergy Corp., FirstEnergy Service Co., Steven E. Strah, and K. Jon Taylor (the "FirstEnergy Defendants") hereby submit this response to Plaintiffs' Motion to Add Additional Party, filed September 27, 2021.

Consistent with the Court’s scheduling order, Plaintiffs have moved for leave to amend their Consolidated Complaint, principally to add Energy Harbor Corp. (“Energy Harbor”) as a Defendant. *See* ECF No. 69. The FirstEnergy Defendants do not oppose the request to amend the Consolidated Complaint or to add Energy Harbor as a Defendant.

The FirstEnergy Defendants do, however, object to the motion’s insinuation that they have no right or opportunity under the Federal Rules to respond to the Amended Complaint. In particular, Plaintiffs represent that, if “this Court believes that the current Defendants will have another opportunity to file a motion to dismiss and further delay the current schedule, Plaintiffs will file a separate action against Energy Harbor and designate such new action as related” to this one. ECF No. 69, ¶ 5.

The FirstEnergy Defendants have no interest in “delay[ing]” the current schedule but are entitled to respond—either by answer or responsive motion—to an amended pleading. *See* Fed. R. Civ. P. 15(a)(3) (providing that “any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading”); *Esparza v. Pierre Foods*, Case Nos. 1:11-cv-874 and 875-HJW, 2012 WL 13118330, at \*1–2 (S.D. Ohio Apr. 24, 2012) (explaining that an “amended pleading supersedes the original pleading,” so “Defendants may, of course, file a new motion to dismiss”).

Importantly, although Plaintiffs represent that the Amended Complaint “do[es] not amend the allegations . . . against the current Defendants” (ECF No. 69 at 1), that is not true. As their redline reflects, the Amended Complaint includes new allegations against the FirstEnergy Defendants. *E.g.*, ECF No. 69-2, ¶ 8 (identifying and attaching Deferred Prosecution Agreement, along with Statement of Facts, between FirstEnergy and U.S. Attorney’s Office); ¶ 13 (identifying alleged “illicit and unlawful payments from FirstEnergy”); ¶ 32 (alleging that “FirstEnergy and

Energy Harbor worked in tandem” to enact HB 6); ¶¶ 99–102 (adding “FirstEnergy” to various allegations about racketeering conduct); ¶ 103 (adding “senior executives at FirstEnergy” to allegations about “specific knowledge” of the “illegal scheme”). The FirstEnergy Defendants are entitled to respond to those allegations, and the Amended Complaint as a whole, as authorized by the Federal Rules.

In short, the FirstEnergy Defendants have no objection to the filing of the Amended Complaint but preserve their right to respond to that new pleading, either by answer or motion.

Dated October 18, 2021

Respectfully submitted,

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*Counsel for Defendants FirstEnergy Corp.,  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 18, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of this filing to all counsel of record.

/s/ Michael R. Gladman

*Counsel for Defendants FirstEnergy Corp.,  
FirstEnergy Service Co., Steven E. Strah, and  
K. Jon Taylor*